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Prof. Larry Goulder, Chair  
And Members of the Economic and Allocation Advisory Committee (EAAC)  
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Chair Goulder and Honorable Members of the Economic and Allocation Advisory Committee:

I am writing on behalf of the Coalition for Clean Air ("CCA") to comment on environmental justice issues discussed in the November 16, 2009 draft report of the Economic and Allocation Advisory Committee (EAAC) entitled "Allocating Emissions Allowances Under California's Cap-and-Trade Program" ("Report"). The CCA is concerned that without proper safeguards, emissions trading under AB 32 will have adverse impacts on low-income communities and communities of color.

The Coalition is pleased that the Report addresses environmental justice issues prominently. However, we believe that the final options discussed in the Report will be insufficient to adequately safeguard disadvantaged communities, and fall short of the statutory requirements set forth in AB 32 itself.

In our letter of October 6, 2009 (attached hereto), the Coalition proposed three policy options to address environmental justice impacts of AB 32: 1) zonal trading systems; 2) co-pollutant surcharges; and 3) community benefits fund (CBF). Of these, the Report only addresses the third option, the CBF. We urge the EAAC to reconsider all three options.

## **BACKGROUND**

Pollution trading programs can have adverse impacts on disadvantaged communities, and AB 32 contains specific provisions requiring CARB to avoid such impacts. Carbon is always released together with co-pollutants. For example, when a power plant releases carbon, it is often released together with particulate matter and other pollutants. When a refinery releases

carbon, it is often released together with mercury, benzene and other co-pollutants. These co-pollutants have very significant localized impacts on the communities surrounding such sources. If these facilities increase their carbon emissions, they will simultaneously increase their toxic co-pollutant emissions.<sup>1</sup>

A poorly designed carbon trading market may allow facilities to increase their carbon emissions by purchasing marketable pollution credits. Such credits may be generated by companies that have reduced their pollution in comparatively less polluted areas. In some global carbon trading programs, reductions have been generated in distant countries by farmers planting trees to sequester carbon, by “clean power” projects, and by myriad other carbon-reducing measures. While the increases in carbon from a local factory may be offset by reductions hundreds or thousands of miles away, the community living adjacent to that factory may be subjected to increases in toxic copollutants, black carbon, or other harmful localized emissions or the opportunity to reduce them at the concerned source will be missed.

This is more than a hypothetical problem. It is well documented that the Regional Clean Air Incentives Market (RECLAIM) trading market in Los Angeles has resulted in the creation of toxic hot spots in communities of color. Professor Raul Lejano of the University of California at Irvine, and Professor Rei Hirose published a detailed analysis of the RECLAIM program in the highly regarded journal, *Environmental Science and Policy*. He concluded that “NOx did concentrate in Wilmington due to RECLAIM, at a time when basin-wide emissions were dropping.”<sup>2</sup> The study found that while RECLAIM resulted in basin-wide pollution reductions, it created increases in toxic pollution in certain low-income communities of color in the Los Angeles area.

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<sup>1</sup> On November 16 2009, PG&E submitted a comment letter arguing that most toxic pollution is released by transportation fuels and refineries and the power plants have comparatively lower levels of co-pollutants. There is no question that some carbon is relatively “cleaner” than other carbon. However, this concern only implicates one of the three policy recommendations made by the Coalition – the co-pollutant surcharge, and is unrelated to zonal trading and the community benefits fund. As to the co-pollutant surcharge, the surcharge can be adjusted based on the relative “cleanliness” or “dirtiness” of the carbon being emitted – in other words, based on the amount of co-pollutants released with the carbon. It should be more expensive to increase emissions of “dirty” carbon than “clean” carbon. This will have the dual benefit of preventing increases of “dirty” carbon, while also incentivizing companies to reduce their co-pollutant emissions. This will achieve the AB 32 mandate to maximize co-benefits of carbon reductions.

<sup>2</sup> R. Lejano, R. Hirose, “Testing the assumptions behind emissions trading in non-market goods: the RECLAIM program in Southern California,” *Environmental Science & Policy*, Volume 8, Issue 4, August 2005, Pages 367-377).



## **AB 32 REQUIRES CARB TO ADOPT MEASURES TO SAFEGUARD ENVIRONMENTAL JUSTICE COMMUNITIES**

AB 32 contains express statutory language requiring ARB to mitigate toxic hot spots, cumulative impacts and environmental justice impacts of pollution trading. In particular, AB 32 requires ARB to:

1. “prevent ***any increase*** in the emissions of toxic air contaminants or criteria air pollutants.”<sup>3</sup>
2. “Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.”<sup>4</sup>
3. “Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.”<sup>5</sup>
4. Maximize the environmental and economic co-benefits of any market-based system,<sup>6</sup> and
5. “***direct public and private investment toward the most disadvantaged communities in California.***”<sup>7</sup>

Some commenters have urged the EAAC to abandon any effort to address environmental justice impacts through AB 32. The statutory language makes clear that if CARB fails to address environmental justice impacts, it will be in plain violation of the law. The commenters who urge CARB and EAAC to ignore these statutory mandates must take their concerns to the legislature, not to this Committee. Thus, the Committee is obligated and must make recommendations that meet these critical requirements.

### **EX POST OR EX ANTE?**

At its hearing on November 18, 2009, several EAAC members asked whether environmental justice issues should be addressed on an *ex post* or *ex ante* basis – after or before the fact. Turning to the statutory language, it is clear that both approaches are necessary. AB 32’s directive to “prevent any increase in emissions of toxic air contaminants,” to “consider the potential for direct, indirect and cumulative emission impacts,” are clearly *ex ante* duties. These provisions require CARB to take action to prevent potential harm to disadvantaged communities in the future.

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<sup>3</sup> CAL. HEALTH & SAFETY CODE § 38570(b)(2) (emphasis added).

<sup>4</sup> Health & Safety Code §38562(b)(2).

<sup>5</sup> *Id.* at § 38570(b)(1).

<sup>6</sup> *See id.* at § 38501(h); § 38562(b)(6); 38570(b)(3).

<sup>7</sup> *Id.* at § 38565.

The CCA believes that co-pollutant surcharges and zonal trading systems are effective methods for CARB to satisfy these *ex ante* duties since these measures will help to prevent the creation or exacerbation of toxic hot spots. Co-pollutant surcharges and zonal trading systems are more fully explained in our October 6 letter, attached hereto.

AB 32 also includes *ex post* mandates, such as the requirement to “ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.” These mandates require monitoring of the effects of the AB 32 program over time and adjustments for any disparate impacts on disadvantaged communities. For example, if toxic hot spots emerge over time, it may be necessary for CARB to take regulatory action to require pollution reductions in particular communities. This is in line with the EAAC’s recommendation in the form of compensation.

Finally, AB 32 contains requirements that must be addressed on *ex ante* basis. In particular, the requirements to “maximize the environmental and economic co-benefits of any market-based system,” and to “direct public and private investment toward the most disadvantaged communities in California.” These mandates are best met through the Community Benefits Fund (“CBF”). A CBF would direct public and private investment toward disadvantaged communities and maximize economic co-benefits. These mandates are not to be considered “compensatory” as discussed in the Report (p. 38). Instead, they embody concepts of distributive justice and an understanding by the legislature that disadvantaged communities will have the most difficulty adapting to climate change and will suffer the most severe impacts – ranging from higher electricity bills to heat exhaustion in addition to having a higher burden of exposure to air pollution relative to other areas within the same air basin. As discussed in the Report at pages 31, “justice considerations also support the use of allowance value to finance adaptation projects, or to remediate environmental problems in disadvantaged communities.” Thus, under AB 32 it is not necessary to wait until environmental justice problems emerge in the future and then compensate communities. AB 32 requires investment in disadvantaged communities from the outset to ensure that the most vulnerable communities are protected from the worst effects of global warming.

The CCA recommends that the Committee make a specific recommendation on the percentage of allowance value that should be set aside for the CBF. From an equity perspective, one could consider for example, that the percentage of the allowance value to be set aside be equivalent to the percentage of the population that needs to be protected. In addition, the Committee should consider adding a factor to the former percentage to compensate for disproportionate impacts of air pollution and global warming impacts on disadvantaged communities. For example, in order to ensure that the X% of the population that is most disadvantaged and adversely affected by air pollution receives this benefit from the CBF, X% of the allowance value can be set aside and another Y% be added to compensate for disproportionate impacts. The CCA urges a 100% auction of pollution credits, with a significant portion of auction revenue funding the CBF. The government should not hand out a



public commodity (clean air) to polluters for free, only to allow the polluters to sell such pollution credits on the free market for a profit.

California Assembly Bill 1405 (DeLeon), pending in the state legislature, defines "the most impacted and disadvantaged communities as those areas within each air basin with the highest 10 percent of air pollution impacts, taking into account air pollution exposures and socioeconomic indicators." Within these communities, the CBF would provide competitive grants for projects for purposes such as reducing emissions of greenhouse gases and co-pollutants, minimizing health impacts caused by global warming, and emergency preparedness for extreme weather events caused by global warming. Possible CBF-funded projects could include:

- retrofitting pollution reduction equipment on mobile or stationary sources
- Energy efficiency upgrades;
- Installing Solar panels during roof replacement in low-income communities;
- Creation of cooling centers in low-income communities;
- Emergency planning and preparedness
- Emergency evacuation, transportation and housing (i.e. Katrina-prevention);
- Transit improvements including subsidy.

## CONCLUSION

By incorporating these concepts into your final recommendations, California will be taking a historical step in protecting the most disadvantaged segments of the population in the implementation of the California Global Warming Solutions Act, by: a) treating communities as partners in the market-based approach; b) accepting our responsibility to minimize the impacts of pollution at a community level; and c) following the requirements as well as the intent of the law. Thank you for considering our comments.

Sincerely,



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Attorney for Coalition for Clean Air

Cc: Mary Nichols, Chairman  
James Goldstene, Executive Officer  
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